



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2005

Mr. Monty Waters  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49th Street  
Austin, Texas 78756-3199

OR2005-02352

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220430.

The Texas Department of State Health Services (the "department") received a request for information relating to a claim of food poisoning that was made against a specific business. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 81.046 of the Health and Safety Code provides in part:

- (a) Reports, records, and information furnished to a health authority or the [Texas Department of Health]<sup>1</sup> that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

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<sup>1</sup>We note that the Texas Department of Health became part of the Texas Department of State Health Services on September 1, 2004. See <http://www.tdh.state.tx.us>; see also Acts 2003, 78th Leg., R.S., ch. 198, eff. Sept. 1, 2003.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c), (d), and (f).

(c) Medical or epidemiological information may be released: (1) for statistical purposes if released in a manner that prevents the identification of any person; (2) with the consent of each person identified in the information; (3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions; (4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or (5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

...

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority or the department.

Health & Safety Code § 81.046(a), (b), (c), (d), and (f). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies.

You state that the information at issue was “either furnished to [the department] or [was] created/gathered by [the department].” You further assert that the submitted information pertains to “cases or suspected cases of diseases or health conditions.” You also represent

that none of the release provisions of section 81.046 is applicable in this instance. Based on your representations and our review of the submitted information, we determine that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. As we are able to make this determination, we need not address your remaining argument.

You also ask this office to issue the department a previous determination regarding the type of information at issue in the instant case. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). This ruling shall serve as a previous determination under section 552.301(a) for information held by the department that is made confidential under section 81.046 of the Health and Safety Code.

This previous determination applies only to reports, records, and information furnished to the department that relate to cases or suspected cases of diseases or health conditions that are made confidential under section 81.046 of the Health and Safety Code. *See* Open Records Decision No. 673 at 7 (2001). We note that you may only withhold this type of information when none of the release provisions of section 81.046 apply. In addition, this previous determination is not applicable to information to which the requestor may have a right of access under any other provision of law. *See, e.g.,* Occ. Code § 159.002 *et seq.* (medical records). So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* Open Records Decision 673 at 7 (2001).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

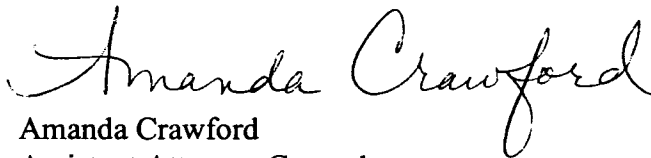
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the printed name and title.

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 220430

Enc. Submitted documents

c: Mr. Joe Lasiter  
de Cordova Bend Estates  
5301 Country Club Drive  
Granbury, Texas 76049  
(w/o enclosures)